

Opinion No. 1380

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FILED

TAX DIVISION

APR 17 1990

CAROSTEAD FOUNDATION	:	
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Petitioner,	:	
	:	
v.	:	Tax Docket No. 3853-86
	:	
DISTRICT OF COLUMBIA	:	
	:	
Respondent.	:	

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA TAX DIVISION

MEMORANDUM OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENT'S CROSS MOTION FOR SUMMARY JUDGMENT

This matter is before the Court upon petitioner's Motion for Summary Judgment, respondent's Motion for Summary Judgment, and the opposition of each party to the motion of the other. Upon consideration of same, the points and authorities in support of the parties' respective positions, and the record herein, and having heard and considered the arguments of counsel for the parties, the Court concludes that petitioner's motion must be granted and respondent's motion must be denied.

The material facts in this case are not in dispute. Petitioner, Carostead Foundation, which has been renamed the Tudor Place Foundation, is a non-profit corporation, organized under the laws of the District of Columbia. Its articles of incorporation state that it "shall be operated exclusively for charitable and educational purposes, and more specifically for the purpose of

participating in charitable and educational activities devoted to the preservation of the heritage of the United States of America, . . .". The purposes of the organization as set forth in its by-laws are as follows:

It shall be entirely charitable and educational, and in particular, shall participate in charitable and educational activities devoted to the preservation of the heritage of the United States of America.

Petitioner's specific purpose is the preservation and management of a property known as "Tudor Place" for the benefit of the public. The property has an architectural and historical significance. It has been declared a national historical landmark by the Secretary of the Interior of the United States. By easement, the property is restricted in use to a residence or museum for the main house. Any other structures must be for the purpose of preserving and maintaining the main house. Tudor Place houses collections of furniture, paintings, china, silver, glass, clothing and photographs dating from the 18th century. It also houses a 5,000 volume library of rare books dating from the early 18th century. Tudor Place maintains manuscripts containing in excess of 25,000 items of some historical significance. The foundation is responsible for preserving and maintaining this collection.

Between July 1, 1985 and June 30, 1986 the property was undergoing various aspects of restoration in order to prepare for opening to the public. Upon completion of the

renovations, petitioner planned to open Tudor Place to the public as a museum designed to give the citizens of the District of Columbia and the United States an opportunity to view history through the building and the various collections in it. The house and grounds of Tudor Place were planned to be open to the public free of charge.

The foundation has been granted an exemption from income and franchise taxes by the District of Columbia under the provisions of D.C. Code §47-1802.1(4). It has been granted an exemption from sales and use taxes under the provisions of D.C. Code §47-2005(3). As a nonprofit corporation, it has been declared exempt from federal income tax under §501(c)(3) of the Internal Revenue Code. It has also been recognized as a tax exempt private operating foundation under the Internal Revenue Code.

It is respondent's position that in order for the real property to be exempt, special legislative action is required under D.C. Code §47-1002 (11). D.C. Code §47-1002 contains a number of provisions exempting certain classes of property belonging to and operated by organizations performing certain functions within the District of Columbia. Art galleries, libraries and buildings used for the purpose of public charity principally in the District of Columbia which belong to and are operated by institutions not organized for private gain are exempt from taxation under subsections (6), (7), and (8) of D.C. Code

§47-1002. Subsection (11) of D.C. Code §47-1002 contains a "catchall" classification for institutions which do not satisfy any other provision of the statute and which possess to some degree the characteristics of those organizations exempted elsewhere. D.C. Code §47-1002(11); District of Columbia v. National Parks Association, 144 U.S. App. D.C. 88, 93 (1971). If the organization falls squarely within the other specific provisions, then it need not seek special legislation in order to be exempt. Id.

On the undisputed facts, petitioner falls within the purview of other subsections of the statute. Therefore, it would not be required to apply for special legislation. It is undisputed that petitioner is not operated for private gain. Petitioner's building will be devoted to the preservation and exhibition of an extensive collection of paintings and other historical documents. The petitioner is committed to use this property as a museum. This use will qualify the building under D.C. Code §47-1002(6) as an art gallery. It will be operated by an organization not for private gain, and it will be open to the public without charge.

Petitioner would also qualify under D.C. Code §47-1002(7) which exempts library buildings. The size of the collection which must be maintained is not specified in the statute. Petitioner maintains a 5,000 volume collection of books and 25,000 manuscripts which will be housed for use by the general public for education, research and historical appreciation.

Buildings owned and operated by institutions not organized or operated for private gain and used for public charity principally in the District of Columbia are exempted from taxation under D.C. Code §47-1002(8). Unquestionably, petitioner meets the requirements of operating principally in the District of Columbia. Again it is not organized or operated for private gain. There remains only the question of whether its purposes and use fall within the definition of charity. It has been held that charitable functions are not intended to be limited to those activities meeting the needs of individuals for the bare necessities of life. District of Columbia v. Friendship House, Ass'n., Inc., 91 U.S. App. D.C. 137, 138 (1952). It is not required that the beneficiaries of petitioner's efforts be impoverished. Id. In considering the meaning of charitable organizations, under the District of Columbia Unemployment Compensation Act, a much broader definition has been recognized. Non-profit organizations designed to benefit and enlighten the community more closely approach the definition intended by the legislation. International Reform Fed. v. District Unemployment Compensation Board, 76 U.S. App. 282, 284 (1942). This definition is consistent with the theory that the tax exemption is a concession given by the state as a quid pro quo for performance of some public service which the state might otherwise be required to undertake. Washington Chapter of American Institution of Banking v.

District of Columbia, 92 U.S. App. D.C. 139, 141 (1953).

Petitioner's activities of maintaining and making available to the public the building, library, manuscripts and other treasures of our history at no charge to the public constitutes a service to the general community which is sufficient consideration for the concession granted by the exemption here. Thus, petitioner also qualifies under D.C. Code §47-1002(8) for the exemption.

Respondent makes no challenge to petitioner's entitlement based on the fact that the building was being renovated between July 1, 1985 and June 30, 1986. When a building is being renovated to accommodate an exempt use on the assessment date, it is exempt in the same manner as if actually being put to such use on the assessment date.

District of Columbia v. George Washington University, U.S. App. D.C. 324, 325 (1958); District of Columbia v. Salvation Army, 105 U.S. App. D.C. 85, 86 (1959).

Respondent contends that the statute requires that historical property be exempted by special legislation. Under D.C. Code §47-1002(11). Respondent points out that certain other properties which may be considered historical have been exempted by special legislation. The circumstances involved with such organizations are not before the Court at this time. On this record, petitioner's organization has shown itself to qualify. Additionally, the legislative history supports petitioner's position. A discussion of the legislative history and the

genesis of D.C. Code §47-1002(11) is set forth in the District of Columbia v. National Parks Association, 144 U.S. App. D.C. 88, 91-93 (1971). Congress was unable to find suitable generalized language which would cover most educational and scientific organizations deserving tax exempt status. Id. at 91. Petitioner does not appear similar to be those institutions included in the "catchall" language of the original legislation. Those organizations were educational, scientific and generally national in scope. District of Columbia v. National Parks Association, 144 U.S. App. D.C. at 92.

On the other hand, petitioner can easily fall within the requirements of D.C. Code §47-1002(6), (7), and (8). When the organization is otherwise exempt, it was intended that special legislation not be resorted to under D.C. Code §47-1002(11). District of Columbia v. National Parks Association, 144 U.S. App. D.C. at 93. This is so even if the organization is broadly similar to those found in D.C. Code §47-1002(11). Id. n.2.

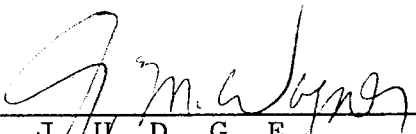
For the foregoing reasons, it appears that petitioner is entitled to judgment as a matter of law. It is therefore by the Court this _____ day of April, 1990,

ORDERED, that petitioner's motion for summary judgment be, and hereby is granted. It is further

ORDERED, that respondent's motion for summary judgment be, and hereby is denied. It is further

ORDERED, that petitioner is entitled to a refund of real property taxes paid for tax year 1986 in the amount

of \$25,310.80, \$759.32 in interest and \$1265.54 for penalties. The total sum is to be refunded with interest at the rate of 6% per annum as provided by law from March 31, 1986.


J U D G E
Signed In Chambers

Copies mailed this 18th day of April, 1990, to each of the following:

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